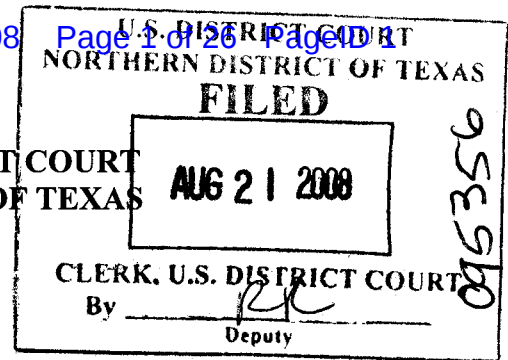


ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



TROY STARTONI,

Plaintiff,

vs.

HOME DEPOT, INC.,

Defendant.

Incorrectly referred to as

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. _____

8-08 CV 1474 - B

JURY DEMANDED

24509

DEFENDANT THE HOME DEPOT, INC.'S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Defendant The Home Depot, Inc. ("Home Depot" or "Defendant") incorrectly referred to as Home Depot, Inc., who files this its Notice of Removal on the basis of diversity jurisdiction, and would show the Court as follows:

1. Home Depot is a defendant in a civil action pending in the County Court at Law No. 4 of Dallas County, Texas, entitled *Troy Startoni vs. Home Depot, Inc.*; Cause No. 08-06017-D (hereinafter referred to as the "State Court Action"). True and correct copies of all process, pleadings, and orders served upon Home Depot in the State Court Action are attached hereto as Exhibits "A" and "B," as required by 28 U.S.C. § 1446(a).

2. The State Court Action was filed on July 10, 2008. Home Depot was served with process on July 22, 2008 and filed its Original Answer on August 8, 2008.

3. In his Original Petition, the Plaintiff did not specify the total amount of damages he is seeking in the lawsuit. However, in the Petition, the Plaintiff does contend that, as a result of the alleged incident in his Petition, he sustained the following injuries: (1) broken ribs; (2) left elbow contusion; (3) back strain; (4) cervical sprain; and (5) right hip pain. The Plaintiff additionally

alleges that he was unable to work, in whole or in part, from July 11, 2006 to the present. In addition to the injuries and loss of wages listed above, the Plaintiff has also pled for damages for past and future medical expenses, lost earnings, pain and suffering and mental anguish, loss of household services, cost of medical monitoring and loss of earning capacity. Based upon the nature and extent of the injuries claimed, the alleged lost wages, and the other damages claimed by the Plaintiff, both in the past and future, it is likely that Plaintiff's damages are in excess of \$75,000.00. This Notice of Removal, therefore, is timely filed within thirty (30) days of service of process of Plaintiff's lawsuit upon Home Depot. *See 28 U.S.C. § 1446(b)*.

4. Plaintiff Troy Startoni is a citizen of the State of Texas.

5. Home Depot is a corporation incorporated under the laws of the State of Delaware with its principal place of business in Atlanta, Georgia. Consequently, Home Depot is a citizen of the States of Delaware and Georgia, and the district courts of the United States have original jurisdiction over this action based on complete diversity of citizenship amongst and between the parties, in that Plaintiff and Home Depot are now and were at the time this action commenced, diverse in citizenship from each other.

6. The amount in controversy in the State Court Action is in excess of \$75,000.00, exclusive of interests and costs. Accordingly, the State Court Action is within the original jurisdiction of this Court pursuant to *28 U.S.C. § 1332*, as it is a civil action wholly between citizens of different states, and, the amount in controversy is in excess of the Court's jurisdictional minimum for diversity cases.

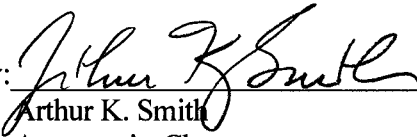
7. Under *28 U.S.C. § 1446(a)*, venue of the removed action is proper in this Court as it is the district and division embracing the place where the State Court Action is pending.

8. Pursuant to 28 U.S.C. § 1446(d), Home Depot will promptly give written notice of the filing of this notice of removal to Plaintiff and will further file a copy of this Notice of Removal with the County Court Clerk of Dallas County, Texas, where the action was previously pending.

9. **Jury Demand** – Home Depot hereby requests trial by jury on all issues and claims in this cause.

WHEREFORE, The Home Depot, Inc. hereby removes the case styled *Troy Startoni vs. Home Depot, Inc.*; Cause No. 08-06017-D, and respectfully request that this Court assume full jurisdiction of this proceeding for all purposes as if originally filed in this Court, including but not limited to issuing any orders necessary to stay proceedings in the State Court Action.

Respectfully submitted,

By: 
Arthur K. Smith
Attorney-in-Charge
Texas State Bar No. 18534100

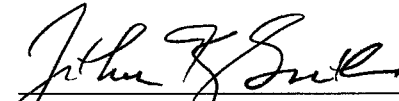
LAW OFFICES OF ARTHUR K. SMITH,
A Professional Corporation

507 Prestige Circle
Allen, Texas 75002
Telephone: (469) 519-2500
Facsimile: (469) 519-2555

ATTORNEY FOR DEFENDANT
THE HOME DEPOT, INC.

CERTIFICATE OF SERVICE

On the 20th day of August, 2008, a true and correct copy of the above and foregoing pleading was served upon counsel for the Plaintiff via certified mail, return receipt requested, in accordance with Rule 5 of the Federal Rules of Civil Procedure.



Arthur K. Smith

150008.321\Fed.Notice of Removal

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TROY STARTONI,

Plaintiff,

vs.

HOME DEPOT, INC.,

Defendant.

§
§
§
§
§
§
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§
§

CIVIL ACTION NO. _____

JURY DEMANDED

INDEX OF DOCUMENTS FILED WITH NOTICE OF REMOVAL

EXHIBIT A Index of Documents Filed with Notice of Removal

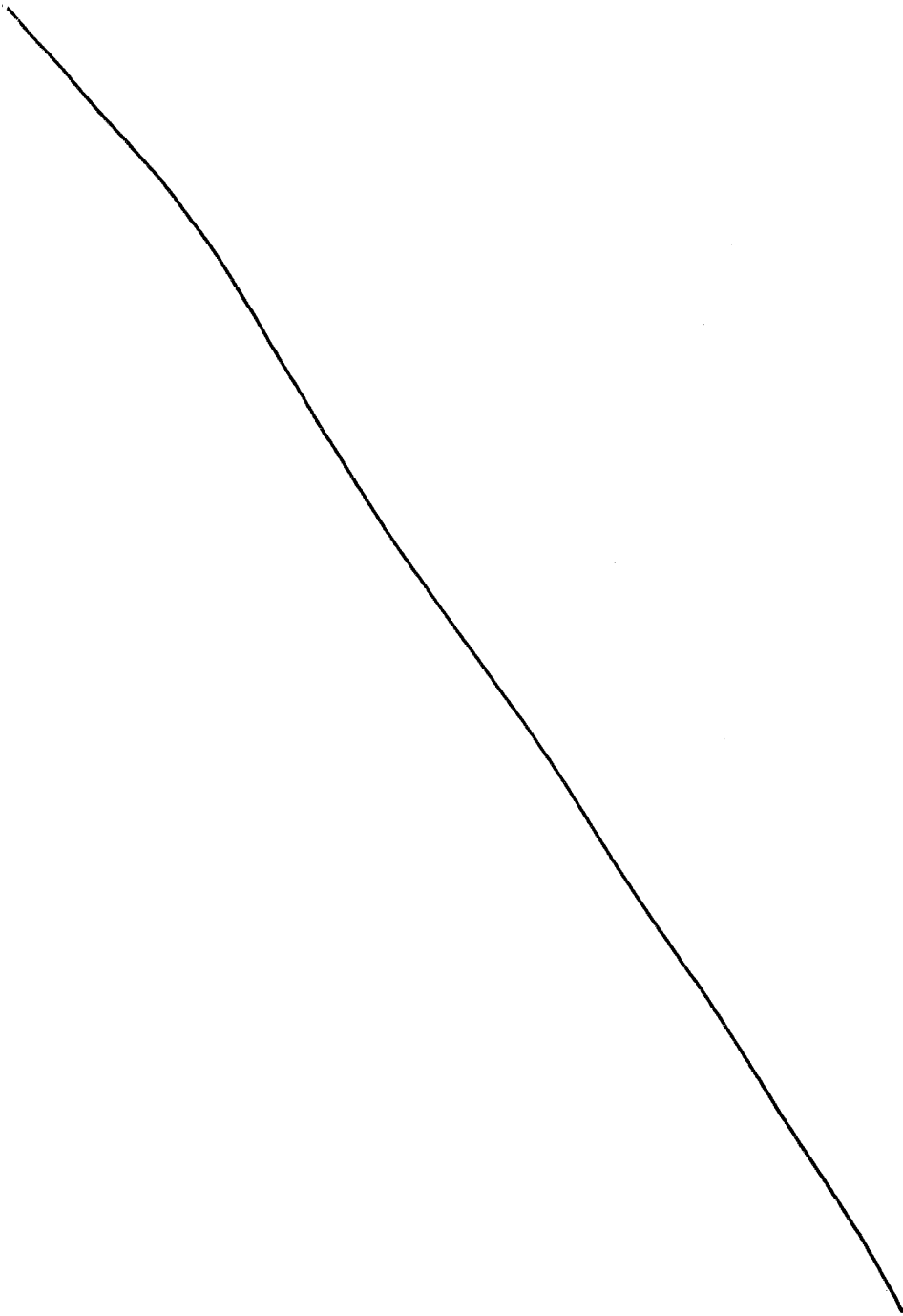
EXHIBIT B State Court Documents

<u>TAB NO.</u>	<u>STATE COURT DOCUMENT</u>	<u>DATE FILED</u>
1	Court's Docket Sheet	N/A
2	Plaintiff's Original Petition	07/10/08
3	Return of Citation for Defendant Home Depot U.S.A., Inc.	07/21/08
4	Original Answer and Special Exceptions of Defendant Home Depot, Inc. to Plaintiff's Original Petition	08/08/08

150008.321\Fed-Not-Removal Index

EXHIBIT A
INDEX OF STATE COURT DOCUMENTS FILED WITH NOTICE OF REMOVAL

1



DOCKET SHEET

CASE NO. CC-08-06017-D

TROY STARTONI
vs. HOME DEPOT, INC.

§
§
§
§

Location: County Court at Law No. 4
Judicial Officer: TAPSCOTT, KEN
Filed on: 07/10/2008

CASE INFORMATION

Case Type: DAMAGES (NON COLLISION)
Sub Type: PERSONAL

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number CC-08-06017-D
Court County Court at Law No. 4
Date Assigned 07/10/2008
Judicial Officer TAPSCOTT, KEN

PARTY INFORMATION

PLAINTIFF

STARTONI, TROY

Lead Attorneys

9

WITHERSPOON, VERNON LEE

2

3

Retained

DEFENDANT

HOME DEPOT, INC.

4

SMITH, ARTHUR K

5

2

Retained

DATE

EVENTS & ORDERS OF THE COURT

INDEX

07/10/2008	ORIGINAL PETITION (OCA - NEW CASE FILED)	
07/10/2008	ISSUE CITATION	
07/10/2008	CITATION HOME DEPOT, INC. served 07/22/2008	
08/11/2008	ORIGINAL ANSWER Party: DEFENDANT HOME DEPOT, INC. AND SPECIAL EXCEPTOPNS OF DEFT HOME DEPOT	
11/17/2008	DISMISSAL HEARING (9:00 AM) (Judicial Officer: TAPSCOTT, KEN)	

DATE

FINANCIAL INFORMATION

PLAINTIFF STARTONI, TROY
Total Charges
Total Payments and Credits

206.00
206.00

COUNTY COURT AT LAW No. 4

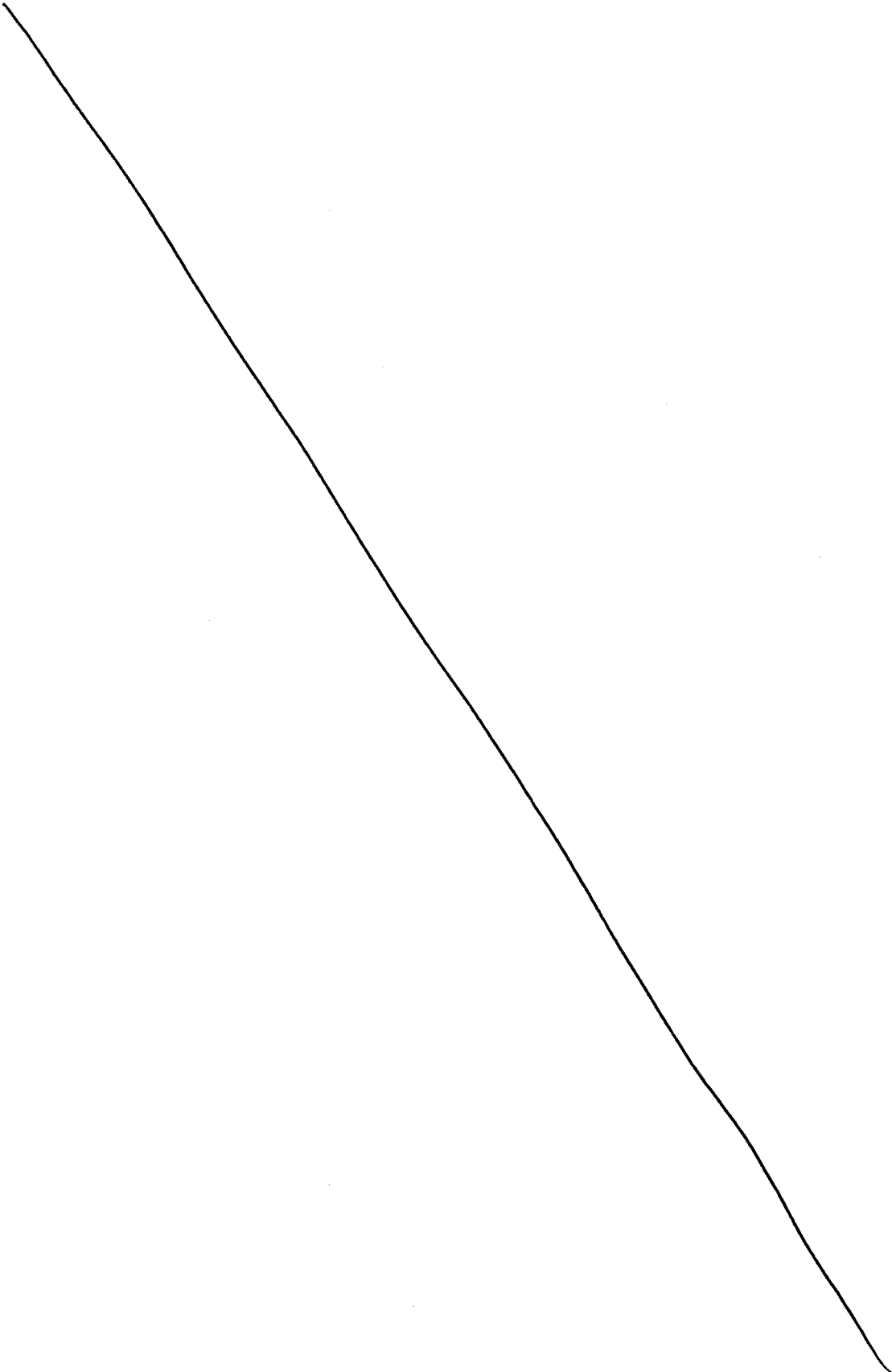
DOCKET SHEET

CASE NO. CC-08-06017-D

Balance Due as of 8/20/2008

0.00

2



TROY STARTONI
Plaintiff,

v.

HOME DEPOT, INC.
Defendant.

NO. 08-66017-D

IN THE COUNTY COURT

AT LAW NO. _____

DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES TROY STARTONI, hereinafter called Plaintiff, complaining of and about HOME DEPOT, INC., hereinafter called Defendant, and for cause of action would show unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

1. Plaintiff intends that discovery be conducted under Discovery Level 2.

PARTIES AND SERVICE

2. Plaintiff, TROY STARTONI, is an Individual whose address is 737 Victor Road, Virginia Beach, Virginia 23454.

3. The last three digits of the driver's license number of TROY STARTONI are 060. The last three digits of the social security number for TROY STARTONI are 176.

4. Defendant HOME DEPOT, INC., a Corporation based in Texas, is organized under the laws of the State of Texas, and service of process on the Defendant may be effected pursuant to article 2.11(A) of the Texas Business Corporation Act, or its successor statute, sections 5.201 and 5.255 of the Texas Business Organizations Code, by serving the registered agent of the corporation, Corporation Service Company at 701 Brazos, Suite 1050, Austin, Texas 78701. Service of said Defendant as described above can be effected by personal delivery.

JURISDICTION AND VENUE

5. The subject matter in controversy is within the jurisdictional limits of this court.
6. This court has jurisdiction over the parties because Defendant is a Texas resident.
7. Venue in Dallas County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions

FILED
2008 JUL 10 AM 10:05
JOHN F. WARREN
COUNTY CLERK
DALLAS COUNTY
RECEIVED
2008 JUL 21 PM 1:18
PCT 1

giving rise to this lawsuit occurred in this county.

FACTS

8. At all times material hereto, Defendant HOME DEPOT, INC. was the owner of the premises located at 12005 Elam Road, Balch Springs, Dallas County, Texas 75180.

9. On or about July 11, 2006, TROY STARTONI was an Invitee on property controlled by the Defendant, and was injured under the following circumstances: Plaintiff was working for a constuction crew with Sunbelt Resources, Inc. at Defendant's Balch Springs, Texas facility, when he fell 12-to-15 feet striking his head, breaking his ribs, and injuring his right hand, hip and back.

LIABILITY OF DEFENDANT HOME DEPOT, INC.

10. At all times mentioned herein, Defendant HOME DEPOT, INC. owned the property in question, located at 12005 Elam Road, Balch Springs, Dallas County, Texas 75180.

11. At all times mentioned herein, Defendant HOME DEPOT, INC. had such control over the premises in question that Defendant HOME DEPOT, INC. owed certain duties to Plaintiff, the breach of which proximately caused the injuries set forth herein.

12. On or about July 11, 2006, TROY STARTONI was an Invitee on the premises owned by the Defendant when TROY STARTONI was injured as a result of the acts and omissions of the Defendant.

LIABILITY OF DEFENDANT HOME DEPOT, INC. UNDER GENERAL NEGLIGENCE THEORY

13. Defendant owed TROY STARTONI and others similarly situated the duty to create a safe working environment for Plaintiff and other similarly situated.

14. Defendant breached said duty by allowing Plaintiff to climb 12-to-15 feet and engage in such high risk activity, which constitutes negligence and was a direct and proximate cause of the injuries sustained by the Plaintiff.

PLAINTIFF'S CLAIM FOR NEGLIGENCE AGAINST DEFENDANT OF KNOWINGLY ENGAGING IN HIGH RISK ACTIVITY

15. As above mentioned, Defendant Home Depot, Inc. failed to maintain a safe working environment for Plaintiff on July 11, 2006. Plaintiff was injured when ordered to climb 12-to-15 feet, allowing Plaintiff to engage in high risk activity. which created or perpetuated a danger to

Plaintiff TROY STARTONI, and any other employee at the job site. Plaintiff was injured by or as a result of the negligent conduct of that activity.

16. The negligent, careless or reckless acts and omissions of Defendant consisted of one or more of the following:

- A. Defendant failed to provide adequate equipment for safe performance at the job site;
- B. Defendant failed to discover and remove the unsafe conditions at the job site within a reasonable time;
- C. Defendant failed to train employees in proper safety procedures at the job site; and
- E. Defendant failed to warn Plaintiff TROY STARTONI of the unsafe conditions inherent in performing his job functions.

17. Due to the above aforementioned acts and omissions, Plaintiff, therefore, in addition to a claim for general negligence, invokes the doctrine of strict liability in Section 402A, Restatement of the Law of Torts, 2d, and as adopted by the Supreme Court of Texas. Defendant Home Depot, Inc. is strictly liable for the injuries and damages to Plaintiff as described herein, and further due to the circumstances and nature of the situation from which the accident arose.

PLAINTIFF'S CLAIM FOR LOSS OF WAGES

18. Plaintiff sustained injuries from the incident in question from July 11, 2006 through the present date and was unable to work, in whole or in part, sustaining a loss of wages for which Plaintiff requests damages.

PROXIMATE CAUSE

19. Each and every, all and singular of the foregoing acts and omissions, on the part of Defendant, taken separately and/or collectively, constitute a direct and proximate cause of the injuries and damages set forth below.

EXEMPLARY DAMAGES

20. Defendant HOME DEPOT, INC.'s acts or omissions described above, when viewed

from the standpoint of Defendant HOME DEPOT, INC. at the time of the act or omission, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiff and others. Defendant HOME DEPOT, INC. had actual, subjective awareness of the risk involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff and others.

21. Based on the facts stated herein, Plaintiff requests exemplary damages be awarded to Plaintiff from Defendant HOME DEPOT, INC.

DAMAGES FOR PLAINTIFF TROY STARTONI

22. As a direct and proximate result of the occurrence made the basis of this lawsuit, and Defendant's acts as described herein, Plaintiff TROY STARTONI was caused to suffer broken ribs, left elbow contusion, back strain and ultimately cervical sprain and right hip pain, and to endure anxiety, pain, and illness resulting in damages more fully set forth below.

23. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff TROY STARTONI has incurred the following damages:

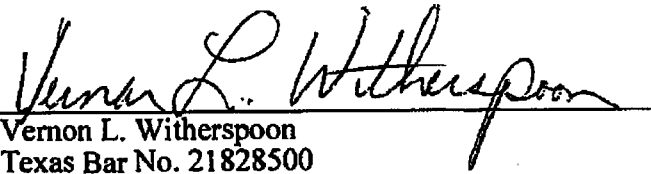
- A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff TROY STARTONI for the necessary care and treatment of the injuries resulting from the accident complained of herein and such charges are reasonable and were usual and customary charges for such services in Dallas County, Texas;
- B. Reasonable and necessary medical care and expenses which will, in all reasonable probability, be incurred in the future;
- C. Physical pain and suffering in the past;
- D. Mental anguish in the past;
- E. Physical pain and suffering in the future;
- F. Mental anguish in the future;
- G. Loss of earnings in the past;
- H. Loss of earning capacity which will, in all probability, be incurred in the future;
- I. Loss of Household Services in the past;
- J. Loss of Household Services in the future; and
- K. Cost of medical monitoring and prevention in the future.

24. By reason of the above, Plaintiff TROY STARTONI has suffered losses and damages in a sum within the jurisdictional limits of the Court and for which this lawsuit is brought.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, TROY STARTONI, respectfully prays that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for damages in an amount within the jurisdictional limits of the Court; exemplary damages, excluding interest, and as allowed by Sec. 41.008, Chapter 41, Texas Civil Practice and Remedies Code; together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

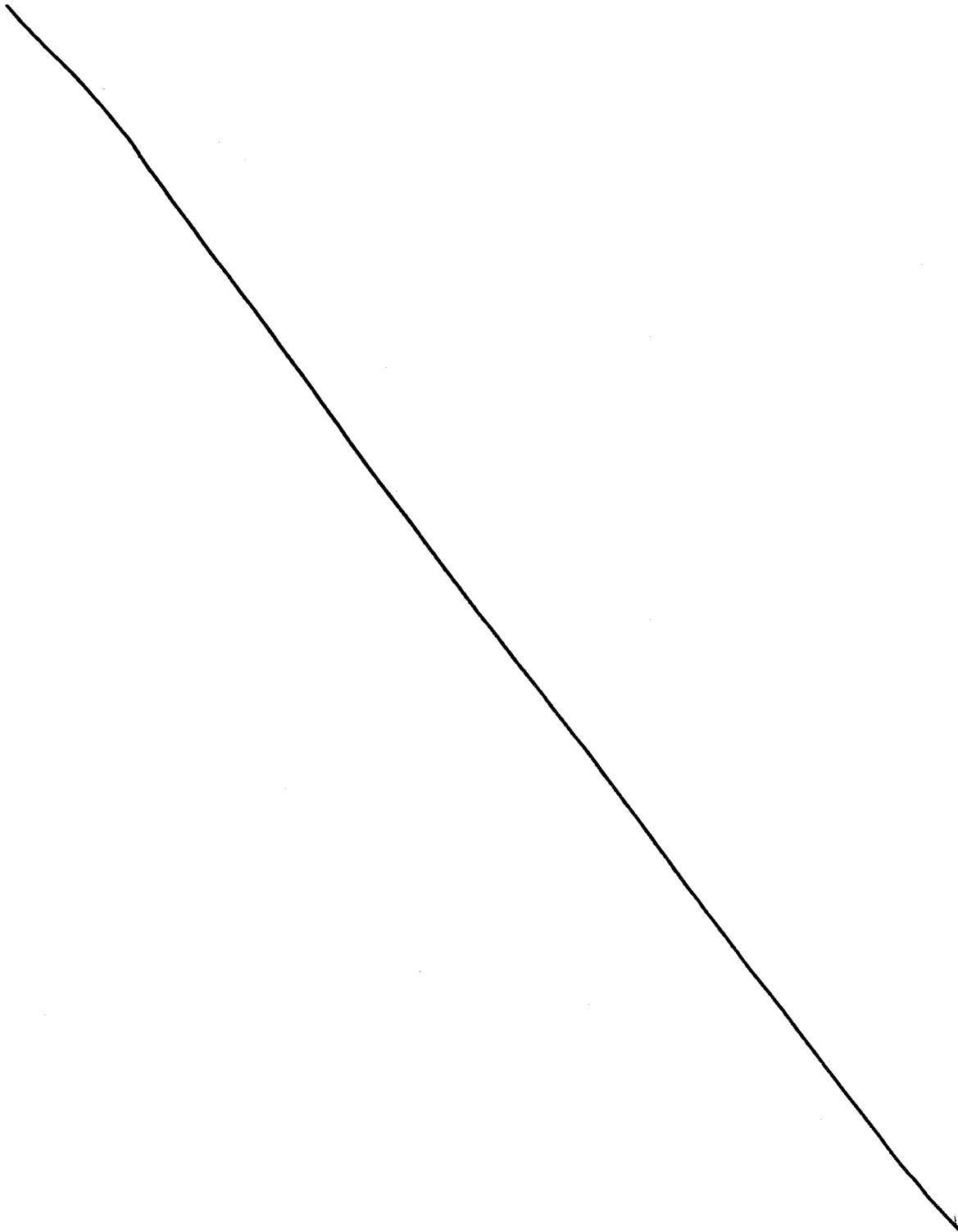

Vernon L. Witherspoon
Texas Bar No. 21828500

LAW OFFICES OF VERNON L. WITHERSPOON
101 N. MacArthur Blvd.
Irving, Texas 75061
(972) 254-3148
Fax: (972) 253-0611

ATTORNEY FOR PLAINTIFF
TROY STARTONI

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY

3



008607531

104

Form No. 412 - CITATION THE STATE OF TEXAS

FILED

CAUSE NO. CC-08-06017-D

COUNTY COURT OF DALLAS COUNTY COURT 2008-08-06 AM 9:40

Dallas County, Texas

JOHN F. WARREN
COUNTY CLERK
DALLAS COUNTY

TO:

HOME DEPOT, INC.
SERVE CORPORATION SERVICE COMPANY
701 BRAZOS SUITE 1050
AUSTIN TX 78701

ENTERED

TROY STARTONI
Plaintiff
VS.

HOME DEPOT, INC.
Defendant

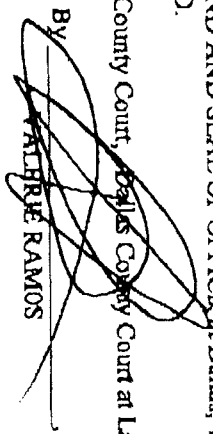
"You have been sued. You may employ an attorney. If you or your attorney do not file a WRITTEN ANSWER with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." Your answer should be addressed to the clerk of County Court at Law No. 4 of Dallas County, Texas, at the Court House of said County 600 Commerce Street Suite 101, Dallas, Texas 75202.

PLAINTIFF
TROY STARTONI

VS.

HOME DEPOT, INC.
DEFENDANT, filed in said Court on the 10th day of July, 2008, a copy of which accompanies this citation.

JOHN WARREN, Clerk of the County Courts of Dallas County, Texas.
GIVEN UNDER MY HAND AND SEAL OF OFFICE, at Dallas, Texas, and issued this 10th day of July, 2008 A.D.

By: 
Valerie Ramos
Deputy

JOHN WARREN, Clerk, County Court, Dallas County Court at Law No. 4, Dallas County, Texas.

RECORD ATT
CITATION

08 JUL 08 08-06017-D

JOHN F. WARREN
COUNTY CLERK
COUNTY COURT OF DALLAS
County Court at Law No. 4
Dallas County, Texas

ISSUED THIS
10th day of July, 2008

John F. Warren, County Clerk
BY: VALERIE RAMOS, Deputy

Attorney for Plaintiff
VERNON LEE WITHERSPOON
KIRST & WITHERSPOON
101 N MACARTHUR BLVD
IRVING TX 75061
972-354-3148

NO OTHER'S FEES HAVE BEEN
COLLECTED BY DALLAS COUNTY CLERK

OFFICER'S RETURN

Came to hand on the 18th day of July A.D., 2008, at 1:21 o'clock P. M. and executed by delivering to Home Depot Inc of Corporation Service Company / To Berrios's at Suite 1050 Austin TX 78761
 on the 22nd day of July A.D., 2008, at 10:18 o'clock A. M., the within named Defendant, in person, a true copy of this Citation, together with a copy of original petition with date of service marked thereon.

Fees
 Serving: \$
 Mileage \$
 Notary \$
 Total \$

TRAVIS County, Texas
Deputy Constable, P. Williams Deputy
Sean Williams

(Must be verified if served outside the State of Texas, or if served in Texas by anyone other than a Sheriff or Constable)

Signed and sworn to by the said _____

before me this _____ day of _____, 20____, to certify which witness my hand and seal of office.

 Notary Public _____ County _____

4

NO. 08-06017-D

FILED

TROY STARTONI,

Plaintiff,

v.

HOME DEPOT, INC.,

Defendant.

IN THE DISTRICT COURT OF DALLAS COUNTY, TEXAS

JOHN F. WARREN
COUNTY CLERK
DALLAS COUNTY
AT LAW NO. 4

DALLAS COUNTY, TEXAS

**ORIGINAL ANSWER AND SPECIAL EXCEPTIONS OF DEFENDANT
HOME DEPOT, INC. TO PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE:

COMES NOW Home Depot, Inc. (hereinafter referred to as "Defendant"), Defendant in the above-entitled and numbered cause, and for its Original Answer and Special Exceptions to Plaintiff's Original Petition would respectfully show unto the Court as follows:

SPECIAL EXCEPTIONS

I.

Defendant specially excepts to Plaintiff's Original Petition (the "Petition") in its entirety on the grounds that it fails to specify the maximum damages sought; and pursuant to Tex. R. Civ. P. 47, requests that Plaintiff be required to specify the maximum amount of damages sought in this proceeding. Of which special exception, Defendant prays judgment of the Court.

II.

Defendant specially excepts to Paragraph 18 and Paragraph 23 of the Petition wherein Plaintiff seeks recovery for unspecified past and future medical expenses and

unspecified past and future lost wages. Defendant is entitled to know the specific types of relief for which Plaintiff seeks recovery; accordingly, this global claim for relief should be stricken or, in the alternative, Plaintiff should be required to replead to specifically identify each type of damages for which he seeks recovery. Of which special exception, Defendant prays judgment of the Court.

III.

Defendant further specially excepts to the prayer for relief of the Petition wherein it is alleged that Plaintiff seeks recovery for "such other and further relief to which the Plaintiff may be entitled at law or in equity." Defendant is entitled to know the specific types of relief for which Plaintiff seeks recovery; accordingly, this global claim for relief should be stricken or, in the alternative, Plaintiff should be required to replead to specifically identify each type of damages for which he seeks recovery. Of which special exception, Defendant prays judgment of the Court.

ORIGINAL ANSWER

IV.

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant hereby enters a general denial, and demands that Plaintiff be required to prove his allegations by a preponderance of the evidence.

V.

In the alternative, Defendant further pleads that the accident in question was proximately caused by one or more third parties over whom this Defendant had no control or right of control.

VI.

Pleading further, Defendant affirmatively alleges that Plaintiff's own negligence was the sole proximate cause, or alternatively, a proximate cause of the incident made the basis of this suit and Plaintiff damages, if any.

VII.

Pursuant to the Texas Government Code § 52.046 (Vernons 1988), Defendant requests that a court reporter attend all sessions of the Court in conjunction with this civil action.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff take nothing by this action and that Defendant be dismissed with its costs, and for such other relief, both general and specific, at law or in equity, to which Defendant may be justly entitled.

Respectfully submitted,

LAW OFFICES OF ARTHUR K. SMITH,
a Professional Corporation

By: 

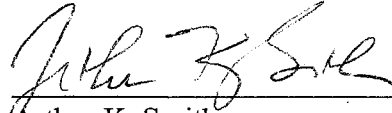
Arthur K. Smith
State Bar No. 18534100

507 Prestige Circle
Allen, Texas 75002
Telephone: (469) 519-2500
Facsimile: (479) 519-2555

ATTORNEYS FOR DEFENDANT
HOME DEPOT, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 8th day of August, 2008, a copy of the foregoing pleading was forwarded via U.S. first class mail to all counsel of record.



Arthur K. Smith

AUG 21 2008

ORIGINAL

United States District Court
Northern District of TexasRECEIVED
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

08-08 CV 1474 - B

**Supplemental Civil Cover Sheet For Cases Removed
From State Court**

This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S. District Clerk's Office. Additional sheets may be used as necessary.

1. State Court Information:

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

Court**Case Number**

County Court at Law No. 4
Dallas County, Texas

08-06017-D

2. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code.)

Party and Party Type**Attorney(s)**

Troy Startoni
Plaintiff

Vernon L. Witherspoon
Law Offices of Vernon L. Witherspoon
101 N. MacArthur Blvd.
Irving, TX 75061
Telephone: (972) 254-3148
Facsimile: (972) 253-0611

The Home Depot, Inc.
Defendant

Arthur K. Smith
State Bar No. 18534100
LAW OFFICES OF ARTHUR K. SMITH,
a Professional Corporation
507 Prestige Circle
Allen, TX 75002
Telephone: (469) 519-2500
Facsimile: (469) 519-2555

3. Jury Demand:

Was a Jury Demand made in State Court? X Yes No

If "Yes," by which party and on what date?

Plaintiff
Party

July 10, 2008
Date

4. Answer:

Was an Answer made in State Court? X Yes No

If "Yes," by which party and on what date?

The Home Depot, Inc.
Party

August 8, 2008
Date

5. Unserved Parties:

The following parties have not been served at the time this case was removed:

Party

Reason(s) for No Service

None.

6. Nonsuited, Dismissed or Terminated Parties:

Please indicate any changes from the style on the State Court papers and the reason for that change:

Party

Reason

None.

7. Claims of the Parties:

The filing party submits the following summary of the remaining claims of each party in this litigation:

Party

Plaintiff

Defendant

Claim(s)

Premises Liability

Deny All Claims

ORIGINAL CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the filing of a case with the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Troy Startoni

(b) County of Residence of First Listed Plaintiff Princess Anne
(EXCEPT IN U.S. PLAINTIFF CASES) County,
Virginia

(c) Attorney's (Firm Name, Address, and Telephone Number)

Vernon L. Witherspoon, Law Offices of Vernon L. Witherspoon, 101
N. MacArthur Blvd., Irving, TX 75061 (972) 254-3148

DEFENDANTS

The Home Depot, Inc.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE DISTRICT OF
LAND INVOLVED.

Attorneys (If Known)

Arthur K. Smith, Law Offices of Arthur K. Smith, 507 Prestige
Circle, Allen, TX 75002 (469) 519-2500

AUG 21 2008

CLERK, U.S. DISTRICT COURT
NORTH DALLAS DISTRICT OF TEXAS

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWW/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC 1332

Brief description of cause:

Personal injury claim based on claims of premises liability

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

not specified

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

8/20/08

SIGNATURE OF ATTORNEY OF RECORD

Arthur K. Smith

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE